

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
GREENVILLE DIVISION

JASON ALSTON

PLAINTIFF

VS.

CIVIL ACTION NO. 4:16-CV-245-DMB-JMV

PRAIRIE FARMS DAIRY, INC. d/b/a LUVEL

DEFENDANT

DEFENDANT'S OPPOSITION TO PLAINTIFF'S  
MOTION TO FILE AMENDED COMPLAINT

Before the court is Plaintiff's motion to file an amended complaint [Doc. 64]. Defendant opposes said motion on grounds it is untimely and results in only further delay of these proceedings.

This action was filed by Plaintiff on December 13, 2016.<sup>1</sup> Now, more than a year after filing his complaint, he seeks to amend the complaint only after discovery in the case has long expired and motions for summary judgment have been briefed and responded to by the parties on the merits of the pending claims. At no point in Plaintiff's motion does he assert or otherwise establish that he could not reasonably have raised these claims prior to now.

The facts [Plaintiff] seeks to add to his complaint now were available to him previously and he has not shown any reason, other than a misguided attempt at strategy, why he failed to plead them before.

*Rosenblatt v. United Way of Great Houston*, 607 F.3d 413, 420 (5<sup>th</sup> Cir. 2010). While delay alone may not justify denial of a motion to amend, denial of the motion is appropriate where the delay is undue in that it prejudices the nonmoving party or places an unfair burden on the court. *Mayeaux v. Louisiana Health Service and Indemnity Co.*, 376 F.3d 420, 427 (5<sup>th</sup> Cir.2004). Indeed, "at some point, time delay on the part of a plaintiff can be procedurally fatal." *Smith v.*

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<sup>1</sup> Based on the court's case management order, amendments were due April 28, 2017.

*EMC Corp.*, 393 590, 595 (5<sup>th</sup> Cir.2004). In such a case, the plaintiff bears the burden of showing that the delay was “due to oversight, inadvertence, or excusable neglect.” *Id.* In this case, Plaintiff fails to provide any explanation for his extreme delay in seeking an amendment at this late date.

Plaintiff’s motion to amend should be denied.

RESPECTFULLY SUBMITTED,

/s/ Timothy W. Lindsay

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**ATTORNEYS FOR DEFENDANT  
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FORMERLY LUVEL**

**CERTIFICATE OF SERVICE**

I, Timothy W. Lindsay, hereby certify that a copy of the foregoing has been served via the Court's Electronic Filing System and via Certified U.S. Mail, which sent notification of such filing to the following:

Jason Alston  
223 Third Avenue  
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***Pro Se Plaintiff***

On this the 21st day of December, 2017.

/s/ Timothy W. Lindsay  
Timothy W. Lindsay